

REMARKS

The Examiner's attention to the present application is noted with appreciation.

Please note that new claims 29-52 have been added to more particularly claim the present invention. The nut butter product and process claims have been separated out from the nut butter spread product and process claims.

The Examiner rejected claims 1 and 14 under 35 U.S.C. § 112 as being indefinite. The claims have been amended such that the claims are no longer indefinite. The Examiner also rejected claims 1-9 and 11-28 under 35 U.S.C. § 112 because the specification does not reasonably provide enablement for broadening amounts by using the term "about." These claims have been amended to delete the term "about."

The Examiner rejected claims 1-9 and 11-28 under 35 U.S.C § 103(a) as being unpatentable over Edson, in view of prior art cited in Applicant's specification, and further in view of Cammarn et al. and still further in view of Avera, and yet still even further in view of Stockton. This rejection is traversed, particularly as to the amended claims.

Applicant's independent claims 1 and 14 and new claims 33 and 42 recite "...the process ... not containing hydrogenated oils, not containing an emulsifier, not containing stabilizers and not containing a bulking agent." It is believed that these limitations overcome the Examiner's rejections as each of the prior art references cited contains at least one of these items. For example, Edson uses flour or fluids which are considered bulking agents (see Edson Col. 1, lines 38-39). Cammarn et al. use soybean and rapeseed hardstock as stabilizers (see Cammarn et al. Col. 4, line 46). Avera uses lightly hydrogenated or hardened oil as stabilizers (see Avera Col. 2, line 56). Stockton also uses hydrogenated oils as stabilizers (see Stockton Col. 5, line 65 to Col. 6, line 3). All of the prior art references relied on by the Examiner contain ingredients which Applicant's invention do not have.

The Examiner also rejected claim 5 as being unpatentable over the above references and in further view of Bolton. However, Bolton is not a nut butter or a nut butter spread but a food product that resembles cheese or a heavy jelly (see Bolton Col. 1, lines 42-43). Although Bolton uses peanuts in his

invention, he combines them with sweet cucumber pickles, which are not included in Applicant's claim 5. The Examiner states that it would have been obvious to add spices, herbs, dried fruits, extracts of the same, salt and sugar to nut butter because Bolton adds cucumbers to a peanut mixture. However, it is not obvious since Bolton fails to add any of the ingredients listed in Applicant's claim 5.

In addition, the Examiner states that Cammarn et al. "disclose that it is known to make peanut butter using unblanched white skinned peanuts." However, unlike Cammarn et al., Applicant uses the skin of the peanuts (See Applicant's claims 29-30 and 49-50). Moreover, Cammarn et al. teach a system which relies on a stabilizer. Applicant's amended independent claims recite "the resulting nut butter not containing stabilizers." Therefore, Cammarn et al. teaches away from Applicant's claimed invention.

Further, none of the references cited by the Examiner disclose a 90 to 99.18% nut content in a nut butter or a 65 to 86.7% nut content is a nut butter spread as recited by Applicant's claims 31-32 and 51-52 and Applicant's specification at ¶24, ¶62 and ¶65.

Finally, while Stockton discloses that coarse grinding may prevent oil separation, Stockton also states that "coarse ground peanut butter is less desirable...[i]t is mealy and does not spread well." As a result, Stockton adds oil to the nut kernels for a more desirable product. In contrast, Applicant uses coarse ground nuts, does not add any extra oil and still produces a desirable product with a lower fat content. Based on this analysis, Applicant's use of coarse ground nuts is not obvious in light of Stockton's mention of coarse ground peanut butter being an undesirable product unless additional oil is added.

Thus, even if all five references can be combined, they do not result in Applicant's invention or render Applicant's invention obvious because they each include ingredients that Applicant's independent claims do not explicitly contain and the prior art references fail to disclose a percentage of nut content as recited by Applicant.

Because several of the prior art references cited by the Examiner teach away from each other, the Examiner's proposed modifications to them, in an attempt to result in Applicant's claimed invention, thus renders the prior art inventions being modified unsatisfactory for their intended purpose. In *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984), the claimed device was a blood filter assembly for use

during medical procedures wherein both the inlet and outlet for the blood were located at the bottom end of the filter assembly, and wherein a gas vent was present at the top of the filter assembly. The prior art reference taught a liquid strainer for removing dirt and water from gasoline and other light oils wherein the inlet and outlet were at the top of the device, and wherein a pet-cock (stopcock) was located at the bottom of the device for periodically removing the collected dirt and water. The reference further taught that the separation is assisted by gravity. The Board concluded the claims were *prima facie* obvious, reasoning that it would have been obvious to turn the reference device upside down. The court reversed, finding that if the prior art device was turned upside down it would be inoperable for its intended purpose because the gasoline to be filtered would be trapped at the top, the water and heavier oils sought to be separated would flow out of the outlet instead of the purified gasoline, and the screen would become clogged.

The Examiner states, in response to Applicant's previous office action response that, "[t]he claims are not to a product, but to a process." Applicant would like to note that claims 14-32 and 42-52 have been amended or added as product claims. Thus, none of the prior art references cited disclose a product as claimed by Applicant.

In view of the above amendments and remarks, it is respectfully submitted that all grounds of rejection and objection have been traversed. It is believed that the case is now in condition for allowance and same is respectfully requested.

If any issues remain, or if the Examiner believes that prosecution of this application might be expedited by discussion of the issues, the Examiner is cordially invited to telephone the undersigned attorney for Applicant at the telephone number listed below.

The fee for additional claims is included. Also being filed herewith is a Petition for Extension of Time to December 19, 2007, with the appropriate fee. Authorization is given to charge payment of any additional fees required, or credit any overpayment, to Deposit Acct. 13-4213.

Respectfully submitted,

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